

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *JK* D.C.
05 DEC 19 AM 10:13

ELAINE L. CHAO, Secretary of)
Labor, United States Department)
of Labor,)

Plaintiff,)

v.)

MIN FANG YANG, HUO GUANG HUANG,)
TASTY BUFFET, INC., and)
TASTY CHINA BUFFET, INC.,)

Defendants.)

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
WD OF TN, MEMPHIS

No. 05-2563 M1/P

ORDER GRANTING DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT
AND GRANTING DEFENDANTS' MOTION FOR PERMISSION TO FILE ANSWER

Before the Court is Defendants' Motion for Permission to File Answer, filed December 1, 2005, and Motion to Set Aside Entry of Default, filed December 2, 2005. Plaintiff responded in opposition to the Motion to Set Aside Entry of Default on December 14, 2005. For the following reasons, the Court GRANTS Defendants' motions.

Plaintiff moved for a default judgment against Defendants on November 30, 2005. The following day, December 1, 2005, the Clerk entered a default against Defendants pursuant to Federal Rule of Civil Procedure 55(a). That same day, Defendants filed their motion for leave to file an answer.

Federal Rule of Civil Procedure 55(c) provides:

For good cause shown the court may set aside an entry

of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

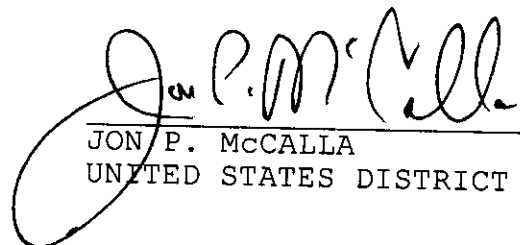
Fed. R. Civ. P. 55(c). The factors to be considered by a Court when faced with a motion to set aside entry of default include:

- (1) Whether culpable conduct of the defendant led to the default,
- (2) Whether the defendant has a meritorious defense, and
- (3) Whether the plaintiff will be prejudiced.

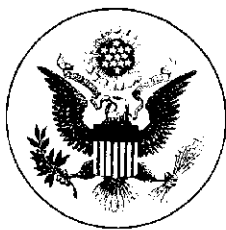
Waifersong, Ltd. v. Classic Music Vending, 976 F.2d 290, 292 (6th Cir. 1992) (citations omitted). In addition, "[t]rials on the merits are favored in federal courts." United Coin Meter Co. v. Seaboard Coastline RR., 705 F.2d 839, 846 (6th Cir. 1983).

The Court finds Defendant's motions well-taken and accordingly GRANTS the Motion to Set Aside Entry of Default and GRANTS the Motion for Permission to File Answer. It is hereby ORDERED that the November 1, 2005, entry of default be and is hereby set aside; it is further ORDERED that the Answer attached as an exhibit to Defendants' Motion for Permission to File Answer be and is hereby filed in this cause.

So ORDERED this 16 day of December, 2005.



JON P. McCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 43 in case 2:05-CV-02563 was distributed by fax, mail, or direct printing on December 19, 2005 to the parties listed.

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Honorable Jon McCalla
US DISTRICT COURT